Case No. S288176

IN THE
SUPREME COURT
OF THE
STATE OF CALIFORNIA

FAMILY VIOLENCE APPELLATE PROJECT and
BAY AREA LEGAL AID,

Petitioners,

v.

SUPERIOR COURTS OF CALIFORNIA, COUNTIES OF
CONTRA COSTA, LOS ANGELES, SANTA CLARA, and
SAN DIEGO,

Respondents.

LEGISLATURE OF THE STATE OF CALIFORNIA,

Real Party in Interest.

APPLICATION FOR PERMISSION TO FILE *AMICI* BRIEF AND PROPOSED BRIEF OF *AMICI CURIAE* DOMESTIC VIOLENCE LEGAL EMPOWERMENT AND APPEALS PROJECT AND 16 ORGANIZATIONS IN SUPPORT OF PETITIONERS

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APPLICATION TO FILE BRIEF OF *AMICI CURIAE*

Pursuant to California Rule of Court 8.487(e), *amici curiae* the Domestic Violence Legal Empowerment and Appeals Project ("DV LEAP") and 16 other legal services providers and other organizations respectfully request leave to file the following brief in support of petitioners Family Violence Appellate Project and Bay Area Legal Aid.

Amici are national and California-based state and local nonprofit organizations that work with survivors of family violence, including those who have sought restraining orders in court proceedings. *Amici* are dedicated to ensuring the safety and well-being of family violence survivors and their children by helping them with the appellate process, offering direct services, engaging in research and education, and exploring and initiating new policies. *Amici* know, first-hand, how important equal and fair access to justice is for all survivors, and *amici* are uniquely situated to assist this Court in resolving the issues presented here by petitioners. Statements identifying each of the *amici* are in the Appendix to this brief.

Amici and their clients have a strong interest in this Court's review of the constitutionality of Government Code section 69957's prohibition of electronic court recording in unlimited civil, family law, and probate proceedings, particularly in those involving family violence survivors. This brief addresses (1) the pervasiveness of family violence issues in the California legal system, (2) the importance of appeals in family violence cases, (3) the need for verbatim recordings to efficiently and fairly execute those appeals, (4) insufficiencies of respondents' expanded provision of electronic court recording for family violence survivors, and (5) the feasibility of implementing electronic court recording in California. As advocates for survivors of family violence, *amici* seek to ensure that survivors can obtain verbatim court recordings, which are necessary to pursue any appeal. This is more than an academic matter: Lifesaving legal

protections may be denied to survivors who lack access to verbatim recordings—without them, there is no meaningful way to appeal. For these reasons, *amici*, as advocates for these survivors, have a substantial interest in this matter.

Amici states that no party or counsel for a party has authored the proposed brief in whole or in part. (Cal. Rules of Court, rules 8.200(c)(3)(A)(i), 8.487(e)(5).) Further, no party or counsel for a party has made any monetary contribution to fund the preparation or submission of the brief. (*Id*., rules 8.200(c)(3)(A)(ii), 8.487(e)(5).)

Dated: April 4, 2025

Respectfully submitted,

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INTRODUCTION

By prohibiting electronic court recording in unlimited civil, family law, and probate proceedings, Government Code section 69957 denies meaningful access to justice to survivors of family violence. In light of the state's well-documented shortage of stenographic court reporters and without access to electronic recording, family violence survivors are often unable to obtain verbatim records of trial court proceedings—records essential to informing any appeal. As a direct result and in violation of their rights, survivors are suffering acute harm by being unable to seek justice through California's appellate process.

Exceptionally vulnerable and frequently facing imminent danger, family violence survivors turn to the courts—often without representation—to protect them. Family violence proceedings, however, are notoriously prone to errors, and survivors must be able to correct those errors on appeal to secure the legal remedies that may quite literally save their lives.

Family violence matters nearly always include disputed and highly sensitive facts, which are often evaluated in oral findings due to the volume of family violence cases and the burden the slew of cases has imposed on courts. The only way to assess those facts after a proceeding is through a verbatim court recording. How else can a survivor or legal counsel weigh the prospective merits of an appeal? How else can an appellate court evaluate a trial court decision? Blocked by Government Code section 69957, survivors have been unable to obtain the verbatim court records necessary to lay the requisite evidentiary foundation to demonstrate and correct errors in cases where their safety and very survival may be at stake. (See *Jameson v. Desta* (2018) 5 Cal.5th 594, 608 [confirming that verbatim recordings of court proceedings are necessary to a litigant's ability to access justice through an appeal].) And as this Court and three respondents have

recognized, Settled and Agreed Statements are simply not viable alternatives for survivors seeking a record of trial court proceedings.

Recognizing their duty to protect litigants' fundamental rights and administer justice fairly, respondents Los Angeles Superior Court ("LASC"), Santa Clara Superior Court ("SCSC"), and Contra Costa Superior Court ("CCSC") recently approved expanded use of electronic recording in their courtrooms. Those amendments are laudable, but they do not go far enough—they do not fully address survivors' fundamental rights and leave the availability of electronic recording up to a court's discretion.

Electronic court recording has already been successfully implemented in state and federal courts around the country, and there is no reason to think that it will create an undue burden on the California legal system. In fact, it is likely to improve efficiency and reduce costs for California courts. But that is not the reason to adopt state-wide electronic court recording. The reason is to allow access to justice that will save lives.

ARGUMENT

I. VERBATIM COURT RECORDINGS ARE NECESSARY FOR FAMILY VIOLENCE SURVIVORS TO PURSUE APPEALS.

A. California Statutory Protections for Family Violence Survivors Are Critical to Their Fundamental Rights.

Each year, thousands of Californians turn to the courts to protect them and their loved ones from imminent danger and ongoing abuse. Family violence issues permeate the justice system, arising not only in family court but also in civil, criminal, and juvenile courts.

This brief uses the term "family violence" interchangeably with California's "domestic violence." In family law and many civil law contexts in California, "domestic violence" is abuse perpetrated against a current or former spouse, cohabitant, partner, coparent, or relation through blood or marriage. (Fam. Code, § 6211.) "Abuse" is broadly defined under

family law and much of civil law in California. In addition to actual or threatened physical violence against person or property, "abuse" includes sexual, psychological, emotional, and litigation abuse, as well as financial, property, and coercive control. (*Id.*, §§ 6203, 6309(a)(1)(C), 6320; Assem. Bill No. 2089 (2013-2014 Reg. Sess.).)

Among other relevant powers, California courts are authorized under the Domestic Violence Prevention Act ("DVPA") (Fam. Code, § 6200 *et seq.*) to issue protective orders "'to restrain any person for the purpose of preventing a recurrence of domestic violence and ensuring a period of separation of the persons involved' upon 'reasonable proof of a past act or acts of abuse.'" (*Br. C. v. Be. C.* (2024) 101 Cal.App.5th 259, 268–269 [quoting *Nevarez v. Tonna* (2014) 227 Cal.App.4th 774, 782] [quoting Fam. Code, § 6300].) Domestic Violence Restraining Orders ("DVROs") provide an immediate and effective remedy against further abuse. (Fam. Code, § 6309(a)(1)(B) ["Research has established that the civil domestic violence restraining order is the most effective legal remedy for intervening in and preventing future abuse."]; *G.G. v. G.S.* (2024) 102 Cal.App.5th 413, 426 ["Restraining orders are generally obeyed; people who obtain restraining orders are far less likely to report future abuse."].) The Legislature has emphasized that these DVROs are of "paramount importance in the State of California as a means for promoting safety, reducing violence and abuse, and preventing serious injury and death." (Stats. 2014, ch. 635, § 1, subd. (i).) Not only do DVROs keep survivors of family violence and their loved ones safe, but they also provide immense psychological benefits, empowering survivors and inspiring autonomy. As the Legislature has found, in addition to ensuring a survivor's safety, DVROs "decrease a [survivor's] fear of future harm, and improve a [survivor's] overall sense of well-being and self-esteem." (Stats. 2014, ch. 635, § 1, subd. (f).)

Essential to ensuring survivors' personal safety and wellbeing, DVROs and other civil and family law cases brought by family violence survivors are expressions of fundamental due process rights and liberty interests under California law. (See Cal. Const., art. I, § 1 ["All people are by nature free and independent and have inalienable rights," including "enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy."]; *id*. § 7, subd. (a) ["A person may not be deprived of life, liberty, or property without due process of law"]; Fam. Code, § 3020(a) [declaring "that children have the right to be safe and free from abuse"]; Assem. Bill No. 2089 (2013-2014 Reg. Sess.) [recognizing a statutory right for "[e]very person to be safe and free from violence and abuse in his or her home and intimate relationships"].) Also, as the Legislature has recognized, Californians have a "right to be free from crimes of violence motivated by gender," which includes domestic violence. (Assem. Bill No. 1928 § 1 (a), (c), & (d) (2001–2002 Reg. Sess.).)

Cases involving family violence survivors make up a substantial portion of California court dockets. From October 2023 to March 2024, the California Access to Justice Commission counted 256,753 family law hearings in state trial courts—approximately 39% of the total hearings during that period. (California Access to Justice Commission, Issue Paper: Access to the Record of California Trial Court Proceedings (Nov. 14, 2024) p. 6.)[1] Over half those hearings were conducted without producing a

[1] "The California Access to Justice Commission has worked for 27 years to advance justice for all Californians by expanding resources, removing barriers, and developing innovations so everyone can effectively and efficiently resolve their civil legal issues. In 2023, the Commission was authorized '[t]o provide ongoing leadership in efforts to achieve full and equal access to justice for all Californians, and to inform the Legislature of its position on any legislative proposal pending before the Legislature and

verbatim record. (*Ibid*.) The same is true for cases involving family violence survivors, both statewide and on respondents' court dockets. The Judicial Council of California counted 20,736 requests for DVROs statewide in fiscal year 2023 alone, with 7,143 related dispositions. (Jud. Council of Cal., 2024 Court Statistics Report: Statewide Caseload Trends 2013–14 Through 2022–23 (2024) p. 85.) And in fiscal year 2022, there were 19,061 such family violence filings in LASC, 2,338 in CCSC, 2,090 in SCSC, and 8,082 in San Diego County Superior Court. (*Id*. at p. 140.)

B. Appeals Are an Essential Part of the Justice System, but They Are Especially Important for Family Violence Survivors.

Family violence survivors critically depend on the legal system to secure remedies for escape, safety, and justice, and the right to a meaningful appeal is a key component of that system. The trial court process is especially prone to errors in family violence cases, so an appeal can be and often is a survivor's last hope. This Court should do everything it can to ensure that survivors maintain the meaningful ability to correct errors on appeal and secure potentially life-saving protection from violence.

1. Appeals Are an Essential Last Resort for Family Violence Survivors to Ensure Access to Potentially Life-Saving Legal Protection.

Family violence survivors are exceptionally vulnerable and in particularly acute need of access to the justice system. Appeals have proved necessary for survivors to maintain this access and to protect their safety and the safety of their loved ones.

The threat to family violence survivors is ongoing and can often increase as they seek justice through the system. They continue to face

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to urge the introduction of legislative proposals.'" (California Access to Justice Commission, Issue Paper: Access to the Record of California Trial Court Proceedings (Nov. 14, 2024) p. 6 [quoting Gov. Code § 68655].)

grave physical, mental, and emotional harm from people they have or used to have deep personal relationships with even after they seek help. They may also fear for the safety and wellbeing of their children and other family members. (See, e.g., *K.T. v. E.S.* (Mar. 21, 2025, B333127) ___ Cal.Rptr.3d ___ [2025 WL 879852] [p. *10] [recognizing the widely documented finding that children are severely impacted by spousal abuse] [collecting sources]; Carlson et al., *Viewing Children's Exposure to Intimate Partner Violence Through a Developmental, Social-Ecological, and Survivor Lens: The Current State of the Field, Challenges, and Future Directions* (2019) 25 Violence Against Women 6, 14–16

The threat is real. "Domestic violence accounts for more than 15 percent of all violent crimes in California and more than 10 percent of all California homicides." (Fam. Code, § 6309(a)(1)(A).) Among homicides nationally, almost half of females and approximately 10 percent of males are killed by an intimate partner. (AdiNader*, Examining Intimate Partner Violence-Related Fatalities: Past Lessons and Future Directions Using U.S. National Data* (Dec. 23, 2022) J. of Fam. Violence p. 1.) And the threat does not go away. Family violence "often increases in frequency and severity over time" without effective intervention. (Fam. Code, § 6309(a)(1)(B).) Abuse that begins as non-physical often escalates. (See, e.g., *G.G.*, *supra*, 102 Cal.App.5th at 425 ["Stalking is 'strongly associated with physical violence'; men who stalk their partners after a break-up are four times more likely to assault them."] [quoting Lo, *A Domestic Violence Dystopia: Abuse via the Internet of Things and Remedies under Current Law* (2021) 109 Cal. L.Rev. 277, 282].) Non-physical abuses "are more than just useful predictors of future physical harm. They cause significant psychological damage on their own." (*Ibid*.) Children, "even when they are not physically assaulted, suffer deep and lasting emotional, health, and behavioral effects from exposure to domestic violence." (See, e.g., *K.T.,*

supra, ___ Cal.Rptr.3d ___ [2025 WL 879852] [p. *10] [quoting Assem. Bill No. 2089 (2013–2014 Reg. Sess.), Stats. 2014, ch. 635, § 1, subd. (d)].) A life surrounded by family violence is detrimental to personal wellbeing and often leads to depression and thoughts of suicide. (See, e.g., Hamby et al., U.S. Dep't of Justice, *Children's Exposure to Intimate Partner Violence and Other Family Violence* (2011) p. 2)

And for survivors, ending a violent relationship may put them at the greatest risk. (Fam. Code, § 6309(a)(1)(B); *Hernandez v. Ashcroft* (9th Cir. 2003) 345 F.3d 824, 837 ["[R]esearch [] shows that women are often at the highest risk of severe abuse or death when they attempt to leave their abusers."] [citing Dutton, *Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome* (1993) 21 Hofstra L.Rev. 1191, 1212].) Among other "significant barriers to safely leaving an abusive relationship," survivors face "a risk of retaliation and escalated violence by the abuser[.]" (Stats. 2014, ch. 635, § 1, subd. (f).) A study of California domestic homicide cases found that 45 percent of women were killed when they were recently separated or in the process of separating from their abuser. (Fukuroda, Cal. Women's Law Center, *Murder at Home: An Examination of Legal and Community Responses to Intimate Femicide in California* (2005) p. 11.)

Like escaping the relationship, appearing in court may bring additional trauma. Litigation can "open the door to further harassment under the guise of procedural equity." (Miller & Smolter, *Paper Abuse: Documenting New Abuse Tactics* (2012) vol. 17 no. 5, Domestic Violence Rep. pp. 65, 75; see Fam. Code, § 6309(a)(1)(C) ["Domestic violence survivors who enter the family or civil court systems seeking protection often face ongoing abuse in the form of litigation abuse."]; *Lister v. Bowen* (2013) 215 Cal.App.4th 319, 336 [acknowledging that "litigation strategies and tactics" may, along with other findings, provide grounds to renew a

restraining order].) Confronting an abuser face-to-face, in court, only adds to the mental and emotional trauma a survivor faces. (See *People v. Cogswell* (2010) 48 Cal.4th 467, 478 [explaining why a survivor of sexual assault may be reluctant to raise the allegations in public court].)[2] Intensifying their vulnerability, survivors struggle with a power differential, reinforced over time with threats of violence, in facing their abuser that has been reinforced over time with threats of violence. (Campbell, *How Domestic Violence Batterers Use Custody Proceedings in Family Courts to Abuse Victims, and How Courts Can Put a Stop to It* (2017) 24 UCLA Women's L.J. 41, 50, 55; Przekop, *One More Battleground: Domestic Violence, Child Custody, and the Batterers' Relentless Pursuit of Their Victims Through the Courts* (2011) 9 Seattle J. Soc. J. 1053.)

It is for this reason that family violence survivors also typically avail themselves of the justice system only when all else has failed. A 2015 study by the National Domestic Violence Hotline showed that survivors have "a strong reluctance to turn to law enforcement for help." (Epstein & Goodman, *Discounting Women: Doubting Domestic Violence Survivors' Credibility and Dismissing Their Experiences* (2019) 167 U. Pa. L.Rev. 399, 452–453 [discussing Logan & Valente, *National Domestic Violence Hotline, Who Will Help Me? Domestic Violence Survivors Speak Out About Law Enforcement Responses* (2015) p. 9].) Of 637 survivors who were surveyed, more than half never called the police. (*Id*. at p. 424, fn. 106.)

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[2] Post-traumatic stress disorder (PTSD) is highly prevalent among women who experience intimate partner violence, with a mean rate of 63.8 percent. (Golding, *Intimate Partner Violence as a Risk Factor for Mental Disorders: A Meta-Analysis* (1999) vol. 14 no. 2, J. of Fam. Violence 99.) Survivors of abuse with PTSD can be reminded of the abuse or even re-traumatized if forced to be in proximity to their abusers.

As if these harrowing realities were not traumatic enough, family violence survivors typically have no legal representation and little if any knowledge of what's to come. Survivors "are unrepresented by counsel in the vast majority of cases." (*In re Marriage of D.S. & A.S.* (2023) 87 Cal.App.5th 926, 934 [quoting *Ross v. Figueroa* (2006) 139 Cal.App.4th 856, 861 [litigants in domestic violence restraining order hearings are *pro se* 90 percent of the time]]; see Jud. Council of Cal., Elkins Family Law Task Force, Final Report and Recommendations (2010) p. 10 [noting that some California counties report that 75 percent of family law cases have at least one self-represented party].) California courts have recognized that "allowance must be made for the [self-represented] status of the parties appearing before the court." (*In re Marriage of D.S.*, *supra*, 87 Cal.App.5th at p. 934 [citing *Ross*, *supra*, 139 Cal.App.4th at p. 861]; see *In re Marriage of Knox* (2022) 83 Cal.App.5th 15, 27 [recognizing that for self-represented litigants in family law cases, "[a]ccess to justice requires that parties be able to appropriately address the court and present their cases."] [quoting Stats. 2010, ch. 352, § 1, subd. (b)].)

Because of the ongoing threat, continual trauma, and lack of legal guidance, family violence survivors are some of the most vulnerable litigants. As the Legislature has maintained, survivors have a right to protection and access to justice. (Stats. 2014, ch. 635, § 1, subd. (f).) And that includes the right to appeal when necessary to access justice.

2. The Nature of Family Violence Cases Requires Access to Appeals.

For several reasons, even well-intentioned trial courts are more likely to make errors in family violence cases, namely, the proceedings' contested, fact-intensive nature, the prevalence of unrepresented survivors, and the "credibility discount" hindering survivors. This heightens the need for appeals in such cases.

First, family law requires California courts to make an array of fact-intensive determinations in evaluating allegations of family violence. For example, a DVRO can be issued if a court finds "reasonable proof of a past act or acts of abuse," which requires evaluating a number of factual issues, including whether the alleged conduct occurred and whether the evidentiary record contains "reasonable proof" of "abuse." (Fam. Code, § 6300.) A DVRO can be renewed by a court if the protected person has a "reasonable apprehension" of future abuse, which similarly requires detailed factual inquiry. (*Ritchie v. Konrad* (2004) 115 Cal.App.4th 1275, 1279.) Family law also uses multi-factor balancing tests in evaluating family violence issues in a variety of areas, including permanent spousal support, mutual DVROs, and custody determinations. (Fam. Code, §§ 3044(b), 4320, 6305.)

Courts are empowered with broad discretion to consider and weigh a wide array of facts before reaching a conclusion. (*In re Marriage of M.S. v. A.S.* (2022) 76 Cal.App.5th 1139, 1143–1144.) These are difficult decisions, with a survivor's safety and an accused's liberty hinging on the outcome. (See Fam. Code, § 6301 [directing courts to "consider the totality of the circumstances in determining whether to grant or deny" a DVRO].) More complicated is the private nature of these cases, which often means there is little if any corroborating evidence to help a judge make crucial determinations. (*In re Marriage of F.M. & M.M.* (2021) 65 Cal.App.5th 106, 119 ["In many domestic violence cases, however, the sole evidence of abuse will be the survivor's own testimony which, standing alone, can be sufficient to establish a fact: 'The testimony of one witness, even that of a party, may constitute substantial evidence.'"] [quoting *In re Marriage of Fregoso & Hernandez* (2016) 5 Cal.App.5th 698, 703].)[3]

[3] Increased appellate court decisions would provide helpful guidance and

Second, as noted, family violence litigants "are unrepresented by counsel in the vast majority of cases." (*In re Marriage of D.S.*, *supra*, 87 Cal.App.5th at p. 934 [quoting *Ross*, *supra*, 139 Cal.App.4th at p. 861].) This increases the likelihood of appealable errors for several reasons. The "high percentage of self-represented litigants places a special burden on bench officers hearing these restraining order requests." (*Ibid*.) Judges in family violence proceedings "cannot rely on the propria per litigants to know each of the procedural steps, to raise objections, to ask all the relevant questions of witnesses, and to otherwise protect their due process rights.'" (*Id*. at p. 935 [quoting *Ross*, *supra*, 139 Cal.App.4th at p. 861, fn. omitted.) Judges cannot simply "sit back and expect a party's lawyer to know about and either assert or by silence forfeit even the most fundamental of the party's constitutional and statutory procedural rights." (*Ibid*. [quoting *Ross*, *supra*, 139 Cal.App.4th at pp. 866–867].) This burden is also imposed on appellate courts as most appellants/respondents on appeal in family violence cases are also self-represented. (Garvin, *The Unintended Consequences of Rebuttable Presumptions to Determine Child Custody in Domestic Violence Cases* (2016) 50 Family L.Q. 173, 190–191.)

Self-represented survivors are limited in their ability to present their cases. Self-represented survivors may face understandable difficulties in interpreting legal language and understanding court rules, procedures, and substantive standards. (See Jud. Council of Cal., Elkins Family Law Task Force, Final Report and Recommendations (2010) pp. 1–3.) Without the knowledge of the law and procedure, survivors have no choice but to rely on the trial court to correctly apply the law. Judges may view self-

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clarity to trial courts on how to approach such complex decisions, thus alleviating their burden and creating more legal consistency across the state. Promoting access to appeals for survivors can therefore have an exponential effect, increasing just outcomes for survivors without any need for appeal.

represented survivors' cases as having less merit and a lower likelihood of success, even when the facts are materially similar to cases with legal representation. (Phillips, *The Bias and Hidden Corruption Against Self-Represented Litigants in Family Court: A Broken System* (Jan. 24, 2025).)

Third, family violence survivors, a majority of whom are women, regrettably face an uphill battle in establishing their credibility in court. As has been borne out in significant academic research, family violence survivors suffer from the so-called "credibility discount"—when a victim's trustworthiness is downgraded based on their perceived status or position relative to the alleged perpetrator. (Epstein & Goodman, *Discounting Women: Doubting Domestic Violence Survivors' Credibility and Dismissing Their Experiences* (2019) 167 U. Pa. L.Rev. 399; Tuerkheimer, *Incredible Women: Sexual Violence and the Credibility Discount* (2017), 166 U. Pa. L.Rev. 1, Northwestern Public Law Research Paper No. 17-05.) This "credibility discount" arises from a confluence of factors. Among other issues, trauma impacts its targets in varying, sometimes counter-intuitive, ways. (Epstein & Goodman, *Discounting Women: Doubting Domestic Violence Survivors' Credibility and Dismissing Their Experiences*, *supra*, at pp. 405, 410–416.) This causes survivors to often have difficulty presenting internally consistent narratives and "appropriate" demeanors that judges, who hold near absolute discretion over credibility determinations, may interpret as indicators of untruthfulness. (*Id*. at pp. 405–416, 420–425.) Survivors also may face bias from negative cultural stereotypes about women and their motivations for seeking assistance. (*Id*. at pp. 405, 425–438.)

"Credibility discounts and experiential trivialization harm women in an abundance of ways[.]" (*Id*. at p. 453.) "Women are devalued and gaslighted from every direction, discouraging them from continuing to seek systemic support." (*Id*.) For example, in discussing the 2015 National

Domestic Violence Hotline study, Deborah Epstein and Lisa Goodman found that over two-thirds of survivors "said they were afraid the police would not believe them—or would do nothing, if they called." (*Id*. at pp. 452–453 [discussing Logan & Valente, *National Domestic Violence Hotline, Who Will Help Me? Domestic Violence Survivors Speak Out About Law Enforcement Responses*, *supra*, at p. 9].)

A striking example of a recurring error in family violence cases is when a court fails to believe a battered mother in a custody proceeding. Joan Meier, founder of *amici* DV LEAP and the National Family Violence Law Center ("NFVLC") and a leading scholar on this issue, reported that approximately one-third of mothers alleging abuse lose custody entirely in family courts around the country. (Meier, *Denial of Family Violence in Court: An Empirical Analysis and Path Forward for Family Law* (2022) 110 Geo. L.J. 835.) This figure increases to 50 percent when the father claims "parental alienation," a problematic theory positing that one parent can intentionally turn a child against another through overt manipulation and denigration, which is often misused to deny one parent's concerns about the other parent's abuse. (*Id*.; see, e.g., Rao, *Rejecting 'Unjustified' Rejection: Why Family Courts Should Exclude Parental Alienation Experts* (2021) 62 B.C. L.Rev. 1759, 1760; Meier, *Parental Alienation Syndrome and Parental Alienation: A Research Review*, VAWnet (Sept. 20, 2013) p. 5.) In another nationwide study, researchers found that "59% of perpetrators were given sole custody and the rest were given joint custody or unsupervised visitation." (Silberg & Dallam, *Abusers Gaining Custody in Family Courts: A Case Series of Over Turned Decisions*, *supra*, J. of Child Custody at pp. 140–169.)

Such injustices have been the source of extensive academic discussion, which has posited a number of possible explanations. Meier has pointed to a confluence of factors, including gender bias,

misconceptions about abuse, unconscious psychological denial, and courts' propensity to grant shared parenting with joint custody. (Meier, *Denial of Family Violence in Court: An Empirical Analysis and Path Forward for Family Law* (2022), 110 Geo. L.J. 835.) Silberg and Dallam added to these findings, pointing to courts' limited education about family violence and child abuse, reliance on unqualified professionals in those areas, and misapplication of psychological testing. (Silberg & Dallam, *Abusers Gaining Custody in Family Courts: A Case Series of Over Turned Decisions*, *supra*, J. of Child Custody, pp. 140–169.)

Trial courts may also miss evidence of a history of abuse, because family violence screening tools and procedures used in custody cases may fail to properly identify prior instances. (See Johnson et al., *Child Custody Mediation in Cases of Domestic Violence: Empirical Evidence of a Failure To Protect* (2005) vol. 11 no. 8, Violence Against Women, pp. 1024–1025.) Many survivors do not report abuse, and family courts may discount previously unreported allegations that only surfaced during a custody dispute. (Meier, *Parental Alienation Syndrome and Parental Alienation: A Research Review* (2013) VAWnet, National Resource Center on Domestic Violence; Thoennes & Tjaden, *The Extent, Nature, and Validity of Sexual Abuse Allegations in Custody/Visitation Disputes* (1990) Child Abuse & Neglect, pp. 151–163.) "Studies have found that family courts are often highly suspicious of [a] mother's motives for being concerned with abuse and mothers who raise concerns are often treated poorly and receive less than favorable custody rulings." (E.g., Silberg & Dallam, *Abusers Gaining Custody in Family Courts: A Case Series of Over Turned Decisions* (2019) Journal of Child Custody, *supra*, at. p. 141 [collecting sources].)

To its credit, California has taken important steps to encourage family courts to carefully consider family violence in making custody determinations. (See Henry, *Expanding the Legal Framework for Child*

Protection: Recognition of and Response to Child Exposure to Domestic Violence in California Law (2017) 91 Social Science Rev. 203, 210 ["Between 1995 and 2015, the California State Legislature made 255 domestic violence-related changes to California law…12 percent targeted or were used to target child exposure to domestic violence directly."].) For example, California law imposes a "rebuttable presumption" against granting custody to an abuser, which can only be overcome by findings in writing or on the record about each of eight statutory factors designed to assess the effects and likelihood of recurrence of domestic violence. (Fam. Code, § 3044; see, e.g., *C.C. v. D.V.* (2024) 105 Cal.App.5th 101, 105.)

But even with a statutory mandate to consider family violence, courts often fall short in their duty, leaving the appellate process as the only route to justice. (Garvin, *The Unintended Consequences of Rebuttable Presumptions to Determine Child Custody in Domestic Violence Cases* (2016) 50 Family L.Q. 173, 178–179 [explaining that the application of the presumption is inconsistent and often distorted by judges]; Lemon & Dorfman Wagner, *Family Violence Appellate Project Finds Many Family Law Judicial Officers Fail to Respond Appropriately in Domestic Violence Cases* (2017) 39 St. B. of Cal. Fam. L. News 27, 28 [finding that 90% of California domestic violence service providers surveyed reported issues with custody and visitation, including a judge's refusal to apply the correct standards mandated by law]; see, e.g., *Keith R. v. Superior Court* (2009) 174 Cal.App.4th 1047, 1056 [inappropriately balancing a policy preference for "frequent and continuing [parental] contact" against the factors in section 3044].)

The aforementioned hurdles to justice for survivors in trial courts collectively heighten the need to ensure that survivors can access potentially life-saving legal protection by pursuing their right to appeal.

C. Verbatim Court Recordings Are Essential for Family Violence Survivors to Appeal.

This Court has long maintained careful watch over the "fundamental protections of the right to appeal." (*Coleman v. Gulf Ins. Group* (1986) 41 Cal.3d 782, 797.) Avenues to appellate review "must be kept free of unreasoned distinctions that can only impede open and equal access to the courts." (*In re Arthur N.* (1974) 36 Cal.App.3d 935, 939 [quoting *Rinaldi v. Yeager* (1966) 384 U.S. 305, 310]; see *Jameson*, *supra*, 5 Cal.5th 594 at p. 599; see also *In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 648 [recognizing that unfettered court access is an important and valuable aspect of an effective system of jurisprudence] [quotation omitted].) Here, California's prohibition on electronic court recording stands as an absolute barrier to many family violence survivors' and other low-income litigants' right to appeal. (See *Jameson*, *supra*, 5 Cal.5th 594 at p. 608.) The Court should remove that obstacle.

This Court recently confirmed that verbatim recordings of court proceedings are necessary to a litigant's ability to access justice through an appeal, explaining that the "lack of a verbatim record of [] proceedings will frequently be fatal to a litigant's ability to have his or her claims of trial court error resolved on the merits by an appellate court." (*Jameson*, *supra*, 5 Cal.5th 594 at p. 608; see *Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 186–187 [collecting cases where appellate courts have declined to reach the merits of a claim without a reporter's transcript].) "This is so because it is a fundamental principle of appellate procedure that a trial court judgment is ordinarily presumed to be correct and the burden is on an appellant to demonstrate, on the basis of the record presented to the appellate court, that the trial court committed an error that justifies reversal of the judgment." (*Jameson*, *supra*, 5 Cal.5th at pp. 608–609 [citation omitted].) Because "[a]ll intendments and presumptions are

indulged to support [the trial court] on matters as to which the record is silent," (*Elena S. v. Kroutik* (2016) 247 Cal.App.4th 570, 574 [quotation omitted]), "the absence of a verbatim record can preclude effective appellate review, cloaking the trial court's actions in an impregnable presumption of correctness regardless of what may have actually transpired," (*In re Marriage of Obrecht* (2016) 245 Cal.App.4th 1, 9, fn. 3.)

In short, the cards are stacked against any litigant who does not have a verbatim recording, since the Court found that "[f]ailure to provide an adequate record on an issue requires that the issue be resolved against" an appellant. (*Jameson*, *supra*, 5 Cal.5th at p. 609 [quotation omitted].) Former Presiding Judge of respondent LASC Samantha P. Jessner and Executive Officer/Clerk of Court David Slayton perhaps said it best: "It is not hyperbole to say: no record, no justice." (Superior Court of California, County of Los Angeles, General Order Re Operation of Electronic Recording Equipment for Specified Proceedings Involving Fundamental Liberty Interests in the Absence of an Available Court Reporter (Sept. 5, 2024) [LASC Gen. Order], Decl. of David W. Slayton, Ex. 4, Letter from LASC to Senate Appropriations Committee p. 1.)

1. Without a Verbatim Recording, Family Violence Survivors Are Left Without Practical Means to Evaluate Whether They Even Have a Potential Appeal.

A verbatim recording is essential for a family violence survivor or appellate counsel to assess whether they might have an appealable claim. Ensuring access to verbatim recordings would also promote efficiency and judicial economy by avoiding appeals where the issues were not sufficiently preserved. This bears out in both *amicus curiae* DV LEAP's experience assessing survivors' applications for pro bono appellate assistance and the California Access to Justice Commission's recent analysis of the consequences of not having a record of court proceedings.

(See California Access to Justice Commission, Issue Paper: Access to the Record of California Trial Court Proceedings (Nov. 14, 2024).)

Appellate legal counsel, like DV LEAP for example, usually rely on a verbatim recording of lower court proceedings to determine the viability of an appeal.[4] Without such a recording, counsel is left to the account of the survivors themselves, who are typically without legal representation at trial, and they "may not understand fully, or at all, what happened in court." (*Id*. at p. 4.)[5] Even if a survivor is fluent in the language used at trial and could comprehend what was said, the survivor cannot be expected to discern what might constitute grounds for an appeal. "Without access to the trial record, a lawyer will have difficulty informing a client about the context and significance of the trial court's decision, as well as any potential errors made by the court." (*Ibid*.) A decision about whether to pursue an appeal should be based on something more than the survivor's memory, which is colored by trauma and fear, not to mention their limited understanding of legal procedures. (*Ibid*.) Memory is "a slim reed on which to base a legal opinion." (*Ibid*.)

Going without a verbatim recording is particularly debilitating in family violence cases because a family court's minute order is often of limited use in assessing the viability of an appeal. The sheer volume of cases and burdens they impose on courts typically result in oral findings

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[4] Indeed, DV LEAP is unable to assess applications for appellate representation without at least an audio recording of the hearing and must turn away many desperate survivor-applicants not able to provide one.

[5] To make matters worse, a family violence survivor's understanding of court proceedings may also be inhibited by a language barrier. (See *Gonzalez v. Munoz* (2007) 156 Cal.App.4th 413, 420 [recognizing that many self-represented family violence survivors "do not speak English"]; Jud. Council of Cal., Elkins Family Law Task Force, Final Report and Recommendations (2010), pp. 1–3.)

and orders, leaving minute orders that include limited information on reasoning or the consideration of evidence that lead to the ultimate rulings. (See, e.g., *In re L.O.* (2021) 67 Cal.App.5th 227, 247 [finding that a minute order from a child custody hearing involving domestic violence was "not a replacement for a statement of the facts supporting the court's decision to remove a child from a parent's custody."] [quoting *In re D.P.* (2020) 44 Cal.App.5th 1058, 1067].) It is also not uncommon for minute orders to contain errors. (See, e.g., *In re G.R.* (2024) 106 Cal.App.5th 96, 99 [noting that minute order in a child-custody hearing involving domestic violence contained a mistake]; *In re J.N.* (2021) 62 Cal.App.5th 767, 777 [same].) In that case, a verbatim recording may be the only avenue to a meaningful appeal in light of the state's shortage of court reporters. (See *Jameson*, *supra*, 5 Cal.5th at pp. 608–609.)

2. The Fact-Intensive Nature of and High Standard of Review in Family Violence Cases Make a Verbatim Recording Critical for a Survivor's Ability to Appeal.

Given the fact-intensive nature of family violence cases, a clear record of the oral proceedings before the trial court is essential for an appellate court to assess whether that court exercised its discretion properly, particularly in weighing evidence. (See, e.g., *Cueto v. Dozier* (2015) 241 Cal.App.4th 550 [finding abuse of discretion in denying request to renew DVRO based on consideration of verbatim record].) Survivors need evidence of oral findings by the court and facts established through testimony to be able to provide appellate courts a sufficiently developed record to support an appeal.

Verbatim recordings are especially significant in family violence proceedings because of the challenging standards of review that survivors face on appeal. For instance, appellate courts may review orders granting or denying a DVRO under the abuse-of-discretion standard and "whether

substantial evidence supports the court's findings, not whether a contrary finding might have been made." (*In re Marriage of M.S.*, *supra*, 76 Cal.App.5th at pp. 1143–1144; see *Ashby v. Ashby* (2021) 68 Cal.App.5th 491, 509, 511–512.) The appellant's burden under these standards is a "heavy one." (*Ashby*, 68 Cal.App.5th at p. 512 [quoting *In re Marriage of Marshall* (2018) 23 Cal.App.5th 477, 487].) A survivor challenging the sufficiency of evidence must rely directly on the record to "summarize the evidence on that point, favorable and unfavorable, and show how and why it is insufficient." (*Ibid*.) The survivor "cannot shift this burden onto respondent, nor is a reviewing court required to undertake an independent examination of the record[.]" (*Ibid.*)

Under these standards, an incomplete record may doom an appeal. (See *Jameson*, *supra*, 5 Cal.5th at pp. 608–609 & fn. 11.) The appellate court affords the prevailing party significant favorable presumptions, including that the lower court judgment is correct and that "the record contains evidence to sustain every finding of fact" unless the survivor can establish otherwise. (*Ashby*, *supra*, 68 Cal.App.5th at pp. 511–512; see *Elena S.*, *supra*, 247 Cal.App.4th at p. 574 ["All intendments and presumptions are indulged to support it on matters as to which the record is silent...."] [quotation omitted].) Without a verbatim recording to defeat this presumption, a survivor is left with no meaningful way to demonstrate error and right a wrong committed by the trial court on appeal.

3. Settled or Agreed Statements Are Not Practicable Alternatives For Family Violence Survivors in California.

As this Court and three respondents have recognized, "the potential availability of a settled or agreed statement does not eliminate the restriction of meaningful access [to justice] caused by" a survivor's inability to obtain a verbatim recording. (*Jameson*, *supra*, 5 Cal.5th at p. 622, fn. 20; see LASC Gen. Order, pp. 3, 9–10; Superior Court of

California, County of Santa Clara, General Order Re Operation of Electronic Recording Equipment for Specified Proceedings Involving Fundamental Liberty Interests in the Absence of an Available Court Reporter, pp. 4, 9–10 (Nov. 14, 2024) [SCSC Gen. Order]; Superior Court of California, County of Contra Costa, General Order Re: Use of Electronic Recording Equipment, p. 9 (Dec. 30, 2024) [CCSC Gen. Order].)

Settled and Agreed Statements purport to provide alternative means to prepare appellate records in cases where a reporter's transcript is unavailable, but there can be no debate that neither statement is a viable replacement for a verbatim transcript in a family violence case. (See, e.g., *Jameson*, *supra*, 5 Cal.5th at p. 622, fn. 20.)[6] In their recent General Orders, respondents LASC, SCSC, and CCSC conceded that they could not preserve meaningful access to justice by relying on Settled or Agreed Statements instead of verbatim transcripts. (LASC Gen. Order, pp. 3, 9–10; SCSC Gen. Order, pp. 4, 9–10; CCSC Gen. Order, p. 9.). These statements bear "inherent limitations [that] usually make them inferior to a reporter's transcript," (LASC Gen. Order, p. 3; SCSC Gen. Order, p. 4) and "can become due process violations when those statements become the only available option," (CCSC Gen. Order, p. 9.)

These statements' limitations carry particular weight in family violence cases. Suggesting that a survivor should confer with an abuser on a Settled or Agreed Statement about the facts and circumstances of the

[6] A Settled Statement "is a summary of the superior court proceedings approved by the superior court." (Cal. Rules of Court, rule 8.137(b)(1).) Prepared by the appellant, subject to the appellee's objections, and certified by the trial court, settled statements define and limit the issues that the appellant may raise on appeal. (*Id*., rule 8.137(b)(2).) An Agreed Statement is a joint submission prepared by the parties to serve in whole or in part as the record on appeal. (*Id*., rule 8.134(a); see Code Civ. Proc., § 1138.)

abuse defies common sense. Asking a survivor to cooperate with an abuser is not only cruel, but it may also violate a DVRO and completely defeat one of the essential purposes of the DVPA to "ensur[e] a period of separation of the persons involved" in family violence. (*Br. C.*, *supra*, 101 Cal.App.5th at pp. 268–269 [citation omitted].)

Settled Statements are also impractical because a court's ability to settle a statement depends on its "memories of proceedings occurring weeks or months prior, which are of ever-decreasing reliability." (CCSC Gen. Order, p. 9 [citing *In re Armstrong* (1981) 126 Cal.App.3d 565, 573].) Complicating this reliance on a court's recollection, family courts handle many matters every day and there is "generally no way to determine in advance what issues may arise" during a hearing that merit careful attention and judicial notetaking. (LASC Gen. Order, p. 9 [quoting *Jameson*, *supra*, 5 Cal.5th at p. 622, fn. 20]; *see People v. Cervantes* (2007) 150 Cal.App.4th 1117, 1121.) It is fair to say that Settled Statements are impossible to rely on in family violence cases, which inherently feature "contentious hearings, particularly those involving unrepresented litigants, [where] judges must focus on their roles as referees and decision-makers and cannot serve as *de facto* CSRs." (LASC Gen. Order, p. 9.) In even the best circumstances—unheard of in family violence cases—preparing a Settled Statement is a long and cumbersome process that puts significant burdens on all involved, especially the court. (LASC Gen. Order, p. 10.)

In light of the range of concerns raised above, survivors are among the "least likely to be able to manage the complex process of creating a settled statement." (*Ibid*.) Forcing survivors to navigate the legal and factual complexities of a settled statement with their abuser is not realistic and precludes their meaningful access to the appellate process.

D. Respondents' Orders Providing for Increased Electronic Court Recording Are Insufficient.

Conceding their inability to properly protect litigants' fundamental rights in light of the court reporter shortage, respondents LASC, SCSC, and CCSC have issued general orders permitting expanded use of electronic court recording.[7] (LASC Gen. Order, pp. 19–20; SCSC Gen. Order, pp. 21–22; CCSC Gen. Order, p. 13.) Under these orders, judges are afforded discretion to permit electronic recording of proceedings where "fundamental rights or liberty interests are at stake," including family law proceedings and "all non-criminal restraining order applications." (LASC Gen. Order, pp. 4, 11, 19–20; see SCSC Gen. Order, p. 13 [permitting recording "to preserve parties' right to appeal when their fundamental rights and liberty interests may be at stake in the hearing."]; CCSC Gen. Order, pp. 2, 7, 13 [permitting recording "of proceedings in which fundamental rights are at stake," including in family law and non-criminal restraining order cases].)

Though undeniably a step in the right direction, respondents' efforts still fall well short of what is necessary to ensure that family violence survivors have meaningful access to justice. First, while the goal is to permit verbatim recording of DVRO proceedings, LASC purports to have done so solely in consideration of the fundamental rights of the restrained person—i.e., the *abuser*. (LASC Gen. Order, p. 11.) Any court examining

[7] On February 19, 2025, the Alameda County Superior Court also issued a General Order "confirm[ing] the discretion of the Court's judicial officers to authorize ER to preserve parties' right to appeal when their fundamental rights and liberty interests may be at stake in the hearing." (Superior Court of the State of California, County of Alameda, General Order Re Operation of Electronic Recording Equipment for Specific Proceedings Involving Fundamental Liberty Interests in the Absence of an Available Court Reporter, p. 13 (Feb. 19, 2025).)

its policies must take into account the fundamental rights of family violence survivors, for whose protection the law exists. Indeed, every DVRO proceeding, regardless of whether a DVRO is ultimately granted, undoubtedly impacts a survivor's fundamental right to safety and wellbeing, as affirmed time and again by the Legislature. (See Cal. Const., art. I, §§ 1, 7, subd. (a) ["A person may not be deprived of life, liberty, or property without due process of law"]; see, e.g., Fam. Code, § 3020(a) [providing children "the right to be safe and free from abuse."]; Assem. Bill No. 2089 (2013-2014 Reg. Sess.) [providing a statutory right for "[e]very person to be safe and free from violence and abuse in his or her home and intimate relationships"]; Assem. Bill No. 1928 § 1 (a), (c), & (d) (2001–2002 Reg. Sess.) [recognizing domestic violence on the basis of gender as a form of sexual discrimination and that "[a]ll persons within California have the right to be free from crimes of violence motivated by gender."].)

Moreover, this Court, in recognition of the fundamental rights of family violence survivors, should ensure electronic recordings in all proceedings that implicate family violence, not just restraining order proceedings. This is essential to protect survivors who rely on courts for legal relief. For instance, research suggests that family violence is a factor in up to half of contested custody cases. (Morrill et al., *Child Custody and Visitation Decisions When the Father has Perpetrated Violence Against the Mother* (2005) vol. 11 no. 8, Violence Against Women, pp. 1076–1107.) Family violence issues also commonly arise in dissolution of marriage proceedings, thus impacting numerous related issues such as spousal and child support orders and property division. Financial remedies, in particular, are integral to family violence survivors' fundamental rights. Survivors' ability to gain financial independence from an abuser is often critical to their and their children's safety. One reason that survivors stay in (or relapse into) abusive relationships is economic necessity—survivors do

not want their children to be homeless or go hungry. (Hess & Del Rosario, *Dreams Deferred: A Survey on the Impact of Intimate Partner Violence on Survivors' Education, Careers, and Economic Security* (2018) Institute for Women's Policy Research, pp. 33–34 [73% of survivors reported staying in abusive relationship longer than they wanted to because they could not afford to leave and 83% reported being unable to support themselves and their children and did not have another place to live].) Without financial independence to afford basic resources like transportation and communication services, survivors are excluded from life-saving support systems, including social, legal, and medical providers, schools, and employment. (Assem. Bill No. 2089 (2013-2014 Reg. Sess.) § 1, subd. (e) [finding that survivors face significant barriers to safely leaving an abusive relationship, including…an impending loss of financial support and housing, the responsibility for other household members and pets, and difficulties accessing legal and community systems to seek protection from abuse.].)

Respondents' orders further fall short in placing the ultimate determination regarding access to electronic recording—a necessity to a family violence survivor's access to justice—within to judicial discretion. This does not ensure that ***all*** essential proceedings will be captured. As LASC acknowledges, "trial judges, like trial counsel, generally cannot 'determine in advance what issues may arise' [citation], so as to know that this is the moment in a hearing at which 'detailed notes' should be taken [citation]." (LASC Gen. Order, p. 9 [quoting *Jameson*, *supra*, 5 Cal.5th at p. 622, fn. 20; *Cervantes*, *supra*, 150 Cal.App.4th at p. 1121].) Yet none of the General Orders acknowledge the direct application of these limitations in asking judges to predict the necessity of a verbatim recording before a hearing has even begun. It's not even only one court that needs to be clairvoyant: Proceedings involving a survivor and an abuser may span

many years and different judges. (E.g., *Ashby*, *supra*, 68 Cal.App.5th at pp. 496–508 [multiple judges oversaw case during a three-year period].)

This Court should expand electronic court recording beyond respondents' general orders as sought by petitioners to ensure that survivors in courts across the state can access verbatim recordings without relying on judicial discretion.

II. PROVIDING VERBATIM COURT RECORDINGS IN CALIFORNIA IS FEASIBLE, COST-EFFECTIVE, AND NOT BURDENSOME.

This case affords California the opportunity to join a growing number of courts around the country permitting universal electronic recording to promote access to justice and improve efficiency. As the only organization providing pro bono appellate representation to survivors nationwide, *amicus curiae* DV LEAP has experience with countless different electronic court recording policies in federal and state courts across the country. The successful implementation of electronic recording in other courts demonstrates that California could easily embrace electronic recording state-wide. Indeed, as California law already permits electronic recording in certain limited circumstances, many courtrooms around the state have already implemented electronic recording equipment. (See LASC Gen. Order, Decl. of David W. Slayton ¶ 8 [explaining that LASC has installed and is actively using electronic recording in "all, or substantially all, of its courtrooms"]; CCSC Gen. Order, p. 5 [explaining that CCSC "has outfitted all of its courtrooms with updated electronic recording and audio technology[.]"].) "Perhaps the time has come at last for California to…permit parties to record [all] proceedings electronically in lieu of the far less reliable method of human stenography and transcription." (*In re Marriage of Obrecht*, *supra*, 245 Cal.App.4th at p. 9, fn. 3.)

A. Courts Around the Country Have Successfully Implemented Electronic Court Reporting.

Electronic court reporting is not new, and neither are the limits of stenography. In December 2009, the Conference of State Court Administrators ("COSCA") proclaimed digital recordings of court proceedings to be the "judicial future" destined to "be the rule rather than the exception." (Conference of State Court Administrators, Digital Recording: Changing Times for Making the Record (Dec. 2009) p. 4 [quoting Gwaltney, *Technology in the Courthouse* (July–August 2008) Journal for the Reporting and Captioning Prof. 44].) Stenographic court reporting "poses challenges to courts in creating, producing, accessing, and preserving the record including (1) the decline in court reporter resources; (2) efficient and timely transcript production; (3) access to justice; and (4) the transparency of court proceedings." (*Id*. at p. 1.) COSCA found that digital recording addressed these issues as it "improves the efficiency of transcript production, broadens access to the verbatim record, drives more effective management of court reporting resources, and further utilizes new technology solutions." (*Id*. at p. 5.)

As COSCA predicted, electronic court recording is now used to prepare official records in at least some courts in nearly every state. (American Association of Electronic Reporters and Transcribers Government Relations Committee, Analysis and Advantages of Digital Court Reporting and Recording in the Courts, Deposition, and Administrative Hearings Markets (Nov. 2016) p. 5.)[8] The California

[8] (See, e.g., Ala. App. Proc. R. 14; Alaska Admin. R. 35; Ariz. Sup. Ct. R. 122; Ark. Sup. Ct. Admin. Order No. 4; Colo. Civ. Proc. R. 79; Conn. Prob. Ct. R. 65; Del. Fam. Ct. Civ. Proc. R. 90.4; D.C. Sup. Ct. Civ. Proc. R. 201; Fla. Gen. Prac. & Jud. Admin. R. 2.535; Ga. Super. Ct. R. 22; Ind. Trial Proc. R. 74; Iowa Code § 602.6405; Kan. Sup. Ct. R. 360; Ma. Civ. Proc.

Access to Justice Commission recently found that "[o]f the 35 states reporting how the trial court record is made for the 2022 National Center for State Courts Court Organization Report, 33 authorized the use of electronic recording for all or some proceedings." (California Access to Justice Commission, Issue Paper: Access to the Record of California Trial Court Proceedings (Nov. 14, 2024) p. 16.)[9]

For example, *amicus curiae* DV LEAP has extensive experience representing family violence survivors in court systems in Washington D.C., Maryland, and Virginia, all three of which provide electronic recordings of court proceedings in some form. (E.g., MD Rule § 16-504(h) [providing electronic recordings of circuit court proceedings for $15 on written request].)[10] Some states have gone further, permitting parties or counsel to make recordings themselves. (See, e.g., Ga. Super. Ct. R. 22; Or. Rev. Stat. 221.358.) Earlier this year, a bill was introduced in the Virginia General Assembly that would permit parties themselves to record proceedings in juvenile and domestic relations district court, which has original jurisdiction for both family law cases and protection order

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R. 76H; Md. R. 16-502, 16-503; Minn. Gen. Prac. R. 4.01, 4.02. 4.03, 4.04; Mo. Ct. Op. R. 4.02; Mont. Loc. Proc. R. 1.3(b)(3); Neb. Ct. R. § 6-1405; Nev. Rev. Stat. Ann. § 4.390; N.H. Admin. Cor. R. 213.01; N.J. Ct. R. 7:8-8; N.M. Rcdg. Jud. Proc. R. 22-301; N.Y. Unif. Fam. Ct. R. 205.37; N.C. Gen Stat. § 7A-198; N.D. Sup. Ct. Admin. R. 39; Ohio Sup. Ct. R. 11; Or. Rev. Stat. 221.358; Pa. Sup. Orph. Ct. R. 10.3; Tenn. Sup. Ct. R. 26 § 2.01 - 2.02; Tex. Fam. Code § 262.206; Utah Jud. Admin. R. 4-201; Wash. Sup. Ct. Civ. Proc. R. 80; Wis. Sup. Ct. R. 71.01; Wyo. App. Proc. R. 3.02.)

[9] In addition, "[t]hirteen of these states authorized the use of video recording for the trial court record in some or all proceedings." (*Ibid*.)

[10] Of note, nonprofit legal service providers representing survivors in the Domestic Violence Division in Washington, D.C., can receive audio recordings free of charge under a policy implemented by Washington, D.C.'s Access to Justice Commission and a previous Chief Judge of the Washington D.C. Superior Court.

petitions. (Virginia Assem. Amend. to Sen. Bill No. 965 (2025).) Advocates for the bill say it "could be particularly beneficial in juvenile and domestic relations courts, where sensitive matters often unfold, and where the stakes for families can be incredibly high." (Citizen Portal, *Virginia legislators propose audio recording of district court proceedings* (Nov. 18, 2024), https://www.citizenportal.ai/articles/2273182/Virginia/Virginia-legislators-propose-audio-recording-of-district-court-proceedings.)

Beyond showing the feasibility of implementing electronic court recording, these particular examples demonstrate that electronic court recording is commonplace in our contemporary justice system and departing from this established practice would be contrary to common sense.

B. Electronic Court Recording Will Not Burden California Courts.

The successful adoption of electronic recording across the country demonstrates that this Court's acceptance of electronic recording will not unduly burden the California legal system.

Electronic recording systems have been shown to save both time and money for trial courts around the country. First, electronic recording streamlines and speeds the process of preparing transcripts. For example, in 2009, Utah transitioned to digital recording and a web-based transcript management system where private transcribers had online access to recorded hearings. (National Center for State Courts, Making the Record Utilizing Digital Electronic Recording (Sept. 2013) p. 24.) This dropped the average preparation time for a transcript to be prepared from 138 days to 22 days for appeals and to within 12 days for cases not on appeal. (*Ibid*.)

Second, while implementing an electronic recording system admittedly may require up-front costs for equipment, there are significant cost savings in the long term. Electronic reporting provides a "very clear economic advantage." (American Association of Electronic Reporters and

Transcribers Government Relations Committee, Analysis and Advantages of Digital Court Reporting and Recording in the Courts, Deposition, and Administrative Hearings Markets (Nov. 2016) p. 17.) For instance, in November 2016, the American Association of Electronic Reporters and Transcribers calculated that converting from stenography electronic reporting saved on average $31,463 in annual operating costs per courtroom. (*Ibid*.) In January 2011, the California Legislative Analyst's Office "recommend[ed] the Legislature direct the trial courts to phase in electronic court reporting. We estimate that the state could save about $13 million in 2011–12 and in excess of $100 million on an annual basis upon its full implementation." (Legislative Analyst's Office, Making Targeted Reductions to the Judicial Branch (Jan. 27, 2011) p. 3.) In addition, any up-front costs will likely be minimized since California has already invested in electronic recording equipment in many courtrooms around the state. (See LASC Gen. Order, Decl. of David W. Slayton ¶ 8; CCSC Gen. Order, p. 5.) Minimal set-up costs cannot possibly justify continuing to prevent survivors' and other litigants' equal and fair access to justice.

Permitting electronic recording in all matters in California trial courts will require a system that ensures quality control. (National Center for State Courts, Making the Record Utilizing Digital Electronic Recording (Sept. 2013) p. 2 ["Effectiveness requires court administrators and judicial leadership to establish and manage a comprehensive program that ensures that all persons responsible for setting up, operating and monitoring the recording equipment and that the Judge, attorneys, and all courtroom participants understand and meet their responsibilities to make the trial court record."].) This necessity exists in all states, of course, and it has not impeded them from implementing electronic court recording. California already has standards for electronic recording in limited civil cases, misdemeanors, and other infractions, which could be easily expanded.

(Cal. Rules of Court, rules 2.952, 2.954.) California would also be able to lean on considerable national resources and guidance from other states on electronic recording best practices. Other states have long ensured that their court personnel properly administer recording equipment, prepare transcripts, and ensure the integrity of the record. (See, e.g., Arizona Manual of Transcript Procedures (Dec. 2006), http://www.supreme.state.az.us/ktr/TranscriptManual.pdf; Wisconsin Supreme Court, Guiding Principles on the Use of Digital Audio Recording (DAR) (Mar. 2023), https://www.wicourts.gov/publications/guides/docs/darguidingprinciples.pdf [as of Mar. 28, 2025].) Many national organizations also provide similar guidance. Since as far back as 2013, the National Center for State Courts has provided recommendations on management structures, courtroom procedures, and best recording practice, among other topics. (National Center for State Courts, Making the Record Utilizing Digital Electronic Recording (Sept. 2013) p. 2.)

CONCLUSION

For all of the above reasons, and in petitioners' petition and memorandum of points and authorities, *amici* respectfully request that this Court grant a writ of mandate and/or prohibition providing the relief requested in the petition.

Dated: April 4, 2025

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

The text of this *amici* brief consists of 8,679 words as counted by the Microsoft Word software program used to generate the brief.

Dated: April 4, 2025

Respectfully submitted,

O'MELVENY & MYERS LLP

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APPENDIX: LIST OF INDIVIDUAL *AMICI CURIAE*

Domestic Violence Legal Empowerment and Appeals Project ("DV LEAP"), a project of Volare (f/k/a Network for Victim Recovery of DC), was founded in 2003 to advance legal protections for domestic violence survivors through appellate advocacy, training, and policy initiatives. It is the only program providing pro bono appellate representation to survivors nationwide. DV LEAP strives to ensure that courts understand the realities of domestic violence and that their decisions provide survivors access to effective legal protection. DV LEAP has filed numerous amicus briefs across the country in state and federal courts, including the United States Supreme Court, to advance judicial understanding of the law's significant implications for domestic violence litigants. In 2022, DV LEAP became affiliated with Volare, adding appellate advocacy to its broad spectrum of crime victims' services spanning acute response through litigation. DV LEAP can provide important insights into family violence, the array of legal proceedings that implicate survivors, and the importance of verbatim recordings to survivors' equal access to appeals and justice.

The National Family Violence Law Center ("NFVLC") serves as the preeminent home for national research and expert support for law and practice reforms to improve the legal system's response to survivors of abuse. It provides pioneering quantitative and qualitative research, training and education, state and federal policy development, and selective litigation. Drawing on its own ground-breaking quantitative and qualitative research along with that of other top researchers, the Center provides training, education and evidence-based solutions for policymakers, professionals, advocates, media, and the public. Founded by Professor of Law Joan S. Meier in partnership with the George Washington University

Law School, the Center also develops state and federal policy proposals and files amicus briefs in high-profile cases consistent with its mission.

Calegislation is a resource center dedicated to providing consumer privacy information, with a particular emphasis on public safety in the contexts of domestic violence, sexual assault, and stalking. Located in California, Calegislation offers educational resources to consumers, legislators, and government agencies and is an active participant in a national network of domestic violence and privacy advocates.

Child Abuse Forensic Institute ("CAFI"), which serves the United States and the world as a whole, is dedicated to providing advocacy in the courts for victims of child abuse. The organization's objective and mission is to assure decisions involving child protection are made with current, generally accepted practices and procedures. The lack of a formal record hurts children when there is no other means of holding the offending parties responsible for their acts.

Public Law Center ("PLC") is a 501(c)(3) legal services organization that has provided free civil legal services to low-income individuals and families across Orange County since 1981. PLC's services encompass a range of substantive areas of law, including consumer, elder justice, family, immigration, housing, tax law, veterans, and health law. PLC's staff and volunteers offer individual representation, community education, and strategic litigation and advocacy to challenge societal injustices.

Survivor Justice Center is a nonprofit law firm with a mission to secure justice for survivors of domestic violence, sexual assault, and human trafficking and empower them to create their own futures. The Center provides free legal services, including representation and other extensive services to survivors throughout Los Angeles County. The Center represents survivors in family and immigration court, and the court-reporter

shortage has made it impossible to appeal some cases and caused unnecessary delays in trials for low-income vulnerable litigants.

California Protective Parents Association ("CPPA") is a nonprofit established in 1998 and headquartered in Oakland. CPPA's mission is to advocate and educate the public and court professionals on matters that will ensure the safety of children and their protective parents who find themselves in the California family and juvenile courts.

Center for Community Solutions ("CCS") is a San Diego County–based nonprofit organization with a mission to end relationship and sexual violence by being a catalyst for caring communities and social justice. Since 1969, CCS has been providing trauma-informed, wrap-around services to empower survivors of relationship and sexual violence as they heal and recover. CCS's free services include a 24/7 confidential crisis hotline, four domestic violence shelters, counseling, legal services, safety planning, and prevention education. CCS is concerned that continuing the law banning the electronic recording of court proceedings deprives litigants of the opportunity to create an accurate record, violating their due process rights and access to justice. This disproportionately harms survivors of relationship and sexual violence, as it can prevent them from preserving evidence crucial for appeals, restraining orders, or holding perpetrators of violence accountable.

Legal Aid of Sonoma County is a non-profit legal services agency serving low-income and vulnerable residents across Sonoma County. Legal Aid of Sonoma County provides legal assistance on a range of substantive issues focused on improving housing stability, personal safety, access to income and healthcare, and targeting historically underserved and underrepresented communities, including children, immigrants, elders, veterans, the disabled, the unsheltered, and those who are geographically isolated. As a direct services provider, Legal Aid of Sonoma County is

regularly in court with indigent litigants, and the ability to create a record is imperative to provide equal access to the judicial process for indigent litigants and to provide effective oversight of trial courts.

With the overall goal of promoting non-abusive behavior in today's world, **Stopping Domestic Violence** is a California-based domestic violence victim service organization that provides free wide-ranging services (including shelter, transportation, health care, education, food, clothing, advice, support, guidance, technology, and communication) to all affected by domestic violence.

Healthy Alternatives to Violent Environments ("HAVEN") is a 501(c)(3) nonprofit organization serving survivors of domestic violence, sexual assault, and human trafficking in Stanislaus County. Domestic violence victims are often unable to take advantage of the full protections offered to them under the law because of barriers just like this. Victims should not be penalized in perusing their right to protection because California cannot supply the needed court reporters. Allowing recording is a sensible solution to a barrier that is beyond the victim's control.

Founded in 1980, **Jenesse Center** is a comprehensive domestic violence intervention program based in South Los Angeles. Our team of staff attorneys regularly represent survivors in family law matters including restraining orders, child custody and visitation, parentage, and divorce. The overwhelming majority of Jenesse's clients live below the federal poverty guidelines and cannot begin to afford court reporter or transcript fees. Their cases are often complex, with features of abusive litigation, and maintaining a court record is crucial to the effective enforcement of court orders related to safety, visitation, and support. As such, Jenesse Center is keenly concerned about the ruling in this case because it will directly impact our community, the survivors we support, and their equal access to justice.

The California Women's Law Center ("CWLC") is a nonprofit organization whose mission is to create a more just and equitable society by breaking down barriers and advancing the potential of women and girls through transformative litigation, policy advocacy and education. Regularly working with low-income individuals on impact litigation and in appeals, CWLC understands that preserving the record in trial courts via access to court recording is critical to these populations in seeking justice.

Sikh Family Center is a national nonprofit that promotes community health and well-being with a special focus on gender justice. We provide trauma-centered interventions for victim-survivors of violence while working to change the social and cultural conditions that allow gendered violence to occur in the first place. We are deeply concerned about the immense harm this ruling causes to all survivors of domestic violence—and especially those with limited means and limited English proficiency—who seek out protection through the courts but are denied justice due to the absence of a recording of their court proceedings.

Queen's Bench Bar Association, formed in 1921, is a nonprofit voluntary membership organization of attorneys, judges and law students that seeks to foster professional and social relationships among women lawyers and to promote equality and opportunity for all women through education, programs, and community outreach. Queen's Bench seeks to advance the interests of women in law and society, and it plays an integral part in furthering the progress of women in the legal profession throughout the Bay Area and beyond.

Founded in 1978, the **Family Violence Law Center ("FVLC")** helps diverse communities in Alameda County heal from domestic violence and sexual assault, advocating for justice and healthy relationships. We provide survivor-centered legal and crisis intervention services, offer prevention education for youth and other community members, and engage

in policy work to create systemic change. The survivors we serve must have the ability to preserve a record in their cases so they can achieve safety and stability for themselves and their children.

Neighborhood Legal Services of Los Angeles County ("NLSLA") is a nonprofit legal aid agency that provides free legal assistance to nearly 160,000 individuals and families throughout Los Angeles County every year. Our advocates specialize in areas of the law that disproportionately impact people living in poverty, including affordable housing and eviction defense, support for domestic violence survivors and their children, access to public benefits, access to healthcare, worker and consumer rights, and employment and training. Core to NLSLA's mission is ensuring access to justice for all litigants, especially those in marginalized and low-income communities. The ability to obtain a verbatim record of court proceedings, as petitioners are seeking to ensure here, is a critical component of that meaningful access.

PROOF OF SERVICE

I am over the age of eighteen years and not a party to the within action. I am employed in the county where the service described below occurred. My business address is 400 South Hope Street, 19th Floor, Los Angeles, California 90071-2899. I am readily familiar with this firm's practice for collection and processing of electronic and physical correspondence. Participants who are registered with TrueFiling will be served electronically. On April 4, 2025, I served the following:

Application For Permission To File *Amici* Brief and Proposed Brief of *Amici Curiae* Domestic Violence Legal Empowerment and Appeals Project and 16 Organizations In Support of Petitioners

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/s/ Kevin A. Kraft
Kevin A. Kraft

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **FAMILY VIOLENCE APPELLATE PROJECT v. S.C. (THE LEGISLATURE OF THE STATE OF CALIFORNIA)**
Case Number: **S288176**
Lower Court Case Number:

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This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

4/4/2025

Date

/s/Court Services

Signature

Kraft, Kevin (318170)

Last Name, First Name (PNum)

O'Melveny & Myers

Law Firm